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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: DENVER, CO Date: JAN 20 2004

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Korea who was last admitted to the United States on February 7, 1992, as a nonimmigrant visitor using a fraudulent passport. The applicant married a naturalized U.S. citizen on October 27, 1997. The applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States with her U.S. citizen spouse and children.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon her U.S. citizen spouse. The application was denied accordingly. *See* Decision of the Acting District Director, dated December 23, 2002.

On appeal, counsel asserts that the applicant did not obtain a visa and passport by fraud or by willfully misrepresenting material facts. Counsel additionally asserts that the denial of the Application of Waiver for Grounds of Excludability amounts to extreme hardship to the applicant, her two sons and her husband. The record contains a brief filed by counsel in support of these assertions. The record also contains a letter from the applicant's husband, dated October 14, 2002 and a letter from the applicant, received March 21, 2001.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

On September 18, 2002, an officer of the Immigration and Naturalization Service [now Citizenship and Immigration Services] interviewed the applicant. The applicant informed the officer that she entered the United States on a fraudulent passport on February 7, 1992. On September 18, 2002, the applicant stated that

arrangements had been made with a friend of the applicant's father in Korea to obtain the passport with a student visa for entry into the United States. The applicant indicated that the friend of her father provided her with a book about the school that her visa stated she was to attend so that she could provide information about it if questioned by an officer. In 1998, the applicant applied for residency in the United States with the fraudulent passport. At the interview relating to that application, the applicant had indicated that she was unaware that the passport was fraudulent. The initial Form I-485 application was subsequently denied on grounds of fraud and misrepresentation.

The district director's decision states, in pertinent part:

> "In assessing whether an applicant has met his burden of establishing that a grant of waiver of inadmissibility is warranted in the exercise of discretion, there is a balancing of the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane consideration presented on his behalf to determine whether the grant of waiver appears to be in the best interest of the United States. *Matter of Mendez-Morales*, Int. Dec. 3272 (BIA 1996).
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> "In a recent decision, the Board of Immigration Appeals reversed longstanding precedent and stated that 'In making a discretionary finding, we believe that we must look at each of the adverse factors, including the alien's initial fraud, to determine whether, in light of all the factors presented, a waiver of deportability should be granted.' *Matter of Tijam*, Interim Decision 3372 (BIA 1999). . . . .
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> . . . .
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> "Although any family separation involves some degree of hardship, you have failed to provide any specific evidence regarding the extreme hardship to you and your family would suffer if you were denied the requested relief."

See Decision of the Acting District Director, dated December 23, 2002. Although the acting district director's physical placement of section 212(i) "exercise of discretion" language could arguably be confusing, the decision does indicate that the basis of the applicant's waiver of inadmissibility denial is that the applicant failed to establish her family would suffer extreme hardship beyond that normally suffered by aliens who are removed from the United States. The acting district director also makes reference to "extreme hardship to you and your family." It should be noted that hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings, and that the only relevant hardship in the present case is that suffered by the applicant's husband.

Nevertheless, the AAO finds that the above errors are harmless in the application. The acting district director's discussion of extreme hardship does not include or appear to have taken into account any hardship factors relating to the applicant herself. Moreover, even if the acting district director did assess hardship to the applicant in the decision, the inclusion of this hardship would not have been harmful to the applicant's case, and the determination that the applicant failed to establish extreme hardship to a qualifying relative would be the same. The record contains no detailed information or corroborative evidence to establish emotional or financial hardship to the applicant's husband.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provides a list of factors it deems relevant in determining whether an alien had established extreme hardship pursuant to section 212(i) of the Act. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. 22 I&N Dec. at 565-566.

Counsel contends that the applicant was unaware that the passport she used to enter the United States was fraudulent. However, the fact remains that the applicant gained admission to the United States fraudulently and is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

Counsel makes several assertions regarding the applicant's contribution to American society through her holding of various jobs, participation in church activities, and relationships with extended family members. *See* Brief of Counsel at 8-10. As discussed above, hardship suffered by the applicant herself is irrelevant to section 212(i) waiver proceedings and the balancing of factors which counsel seeks is not reached unless extreme hardship to a qualifying relative is established in the application.

Counsel further asserts that the applicant's two U.S. citizen children will suffer extreme hardship if the applicant is removed from the United States. However, section 212(i) does not include consideration of hardship suffered by the son or daughter of an applicant, only hardship suffered by the applicant's U.S. citizen husband is considered under section 212(i) waiver proceedings.

Counsel contends that the applicant's husband will suffer extreme hardship as a result of losing the applicant's assistance in running his business and caring for the children. The record does not establish that the applicant is the only person able to care for the children or provide support to the business of the applicant's spouse. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from his wife. However, his situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

Section 212(i) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary must then assess whether an exercise of discretion is warranted. Because the applicant failed to establish the section 212(i) statutory extreme hardship element of his case, the acting district director was not

required to balance the adverse and positive factors of the applicant's case. Having found the applicant ineligible for relief, the AAO finds that no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(2)(A) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.